The Southern PATRIOT

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Civil Rights Bill: A Muddle Wrapped in Inertia

At this writing the status of civil rights legislation is a muddle wrapped in inertia.

If any law emerges from this session of Congress it seems fairly certain it will embody a modified "trial-by-jury" provision approved by the Senate.

The NAACP and AFL-CIO, among others, have bowed to this apparent inevitability, and now back the Senate measure on the ground that it is better than nothing.

There still remains much confusion about what the "trial-by-jury" clause means—and, since it involves technical court procedure, we do not claim to have a complete understanding. As best we can grasp the matter, here are the elements involved:

In civil or "equity" actions—such as the U. S. Attorney General would be empowered to bring, if the bill passed—there are two kinds of contempt of court, "civil" and "criminal."

In "civil" contempt, the defendant "carries the key to the jail in his own pocket." That is to say, the judge orders him to jail until such time as he agrees to comply with the orders of the court.

In "criminal" contempt, the defendant is given a specific punishment—imprisonment and/or fine—whether or not he ultimately obeys the court.

At present, neither of these instances need be tried by jury. The federal judge alone determines the guilt and the punishment.

Under the Senate bill, "civil" contempt would still be left to the discretion of the bench. But "criminal" contempt would require a jury trial before being invoked.

If the foregoing is the case, then any true supporter of civil rights legislation might see this possible gain in the bill:

(1) The Attorney General will have a new power to initiate suits, and plaintiffs will not be obliged to shuttle through state courts before seeking federal relief.

(2) No matter how hostile the area and unlikely the chances of a fair jury trial, federal judges still retain the weapon of "civil" contempt to bring about the end of abuses.

(3) There remains the provision for establishment of a Civil Rights Commission, with subpoena powers, which could be a valuable instrument for unearthing and publicizing injustices suffered by minorities.

"Now do you want to try for nothing?"

So much for the best possible interpretation that can be made.

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During the height of the debate in the Senate the SCEF arranged for an advertisement in the Washington **Post and Times-Herald** which urged that the jury-trial proviso be rejected. The ad was sponsored by 85 Southerners, with SCEF President Aubrey Williams as coordinator (See page 2).

This brought the following letter from Sen. Lyndon Johnson of Texas:

UNITED STATES SENATE
Office of the Democratic Leader
Washington, D. C.

July 23, 1957

Mr. Aubrey W. Williams, President
Southern Conference Educational Fund, Inc.
New Orleans, Louisiana

Dear Aubrey:

We have been friends for many years. On the basis of that friendship I am presuming to tell you frankly that I believe you are working yourself into an untenable position. Certainly I do not propose to pass any legislation—nor does anyone else, to my knowledge—that would "abolish" any legitimate powers of the courts.

Neither, for that matter, does anyone propose to "do violence to a fundamental principle of equity of long established standing."

It is a simple matter to take hard and fast positions on essentially complicated questions. Certainly there will be many—on both sides of the issue—who will be tempted to do so for reasons not altogether unrelated to personal advantage. I do not believe you belong in that category.

There are honest and sincere men whose devotion to the "civil rights cause" cannot be questioned, who are struggling to resolve the intricacies of the issue. They include men of the calibre of Senator Clark of Pennsylvania, Senator O'Mahoney of Wyoming and Senator Kefauver of Tennessee. All of them have grave doubts as to the wisdom of abolishing trial by jury through the use of a legal subterfuge.

Aubrey, I tell you quite frankly that I cannot find it in my conscience to juggle with the concept of equity in order to by-pass one of the fundamental concepts of our liberties. Furthermore, I cannot agree with you that we must do so in order to secure an effective guarantee of voting rights. I do not believe that the jury trial and the right to vote are incompatible, and, speaking again as a friend who wishes you well, I believe if you examine all of the facts carefully you will come to the same conclusion.

Sincerely,
LYNDON B. JOHNSON

A compromise designed to bring House and Senate agreement on the jury-trial clause of the civil rights bill was reported by the Associated Press to have this provision:

"In the event such proceeding for criminal contempt be tried before a judge without a jury and the sentence of the court upon conviction is a fine in excess of the sum of $300 or imprisonment in excess of 45 days, the accused in said proceeding, upon demand therefor, shall be entitled to a trial de novo (anew, afresh) before a jury, which shall conform as near as may be to the practice in other criminal cases."

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Why Jury-Trial Gimmick Held A Fatal Appeal

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Mr. Williams made the following reply:

Hon. Lyndon B. Johnson
United States Senate
Washington, D. C.

Dear Lyndon:

Thank you for your letter of July 23rd. I appreciate you taking the time and trouble to write me so fully. I know how busy you are. It would be hard to find a man who had a fuller day.

I have read carefully everything you wrote and I can see how you justify your position on the basis that you will at least get something, and I am not finding fault with you. However I just do not think you are thinking the thing through to the actual local situations where any civil rights law would have to prove itself.

Let's take a given situation. Suppose here in Montgomery a judge should order the registrars to stop their currently dilatory tactics and proceed to register Negroes with reasonable dispatch and a proper consideration for their convenience—as they now do in the case of any white person who applies.

And suppose the judge found at a later date that the registrars had not obeyed his order but were continuing their delaying and obstructing tactics and proceeded to find them in contempt. Now what I would like to ask is, would such registrars be able under your amendment to demand and be entitled to have a jury trial? If they would, then you can pass civil rights bills until you are blue in the face and you will not help Negroes in Montgomery, Alabama, get the right to vote.

Lyndon, my dear fellow, let's don't kid ourselves, this "jury trial" idea is sprung as a defeating move. No Southern state has ever had such; it is only now as our good friends from these Deep South states see this thing coming down on them that they spring this. It was a clever stratagem but it should be seen for what it is and disowned and fought for that reason.

With warm personal regards,

Sincerely,

AUBREY W. WILLIAMS

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Perhaps I.F. Stone—the best of Washington journalists—described the reasons why the jury-trial idea prevailed. He wrote in his weekly newsletter:

"The strength of the South's position in the Senate debate is that it succeeded in putting the North in the wrong morally and therefore . . . politically by taking its stand on the trial-by-jury issue.

"The issue was simple, though deceptively so; it invoked honored symbols and stirred deep conditioned reflexes. All the answers to it were ineffective because they were complicated. How explain the intricacies of equity and the technicalities of civil and criminal contempt to a vast lay audience, especially one that was only half listening?

"More important, the answers at least by implication attacked the fundamental myths of our society. To say that there were issues or occasions on which juries — twelve good men and true—could not be trusted was to say that the Common Man was faulty.

"In no political system do men dare disparage the sovereign or his symbols; in a democratic society, no campaign can be waged successfully that is unflattering to the ordinary voter."

Roy Wilkins, executive secretary of the NAACP, pointed to another aspect

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(The advertisement below appeared in the **Washington Post** and **Times Herald**)

An Open Letter From the South On

CIVIL RIGHTS

To the Senate of the United States:

The right to vote, consecrated by our democratic institutions, is entitled to all means of protection existing in our judicial system. The Administration's civil rights bill H.R. 6127 will fill an aching gap in providing a means of preventive action to protect that right from encroachment.

The confusing proposals to amend the bill by a provision for jury trial, however limited, can only cripple the enforcement of the law by introducing into the proceeding the very local prejudice against which protection is sought. Also the jury trial provision introduces a weapon of delay which can be used to withhold indefinitely the right to vote.

H. R. 6127, in providing injunctive relief, properly orients the procedure within the historical area of equity jurisdiction of the courts. Jury trial never has been an integral part of equity proceedings. A court's decree is an order to those before it to do or to refrain from doing certain things. A party dissatisfied with the decree has his full rights of appeal and review. In the rare case in which a party refuses to honor the decree of an equity court, the court has the power to punish him for contempt.

The contempt powers of equity courts are founded on the fundamental sanctity and authority of the court to enforce its own decree, and not on any concept of crime against the state, in which case the right to jury trial is inviolate, and is unaffected by the Administration's bill.

It would be better not to pass any civil rights legislation at all than to pass a bill which limits the power of courts to enforce their orders. We are in a better position to get justice in civil rights cases under existing laws than we would be if you pass the proposed "jury trial" amendments.

This advertisement is sponsored by the following persons:

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Mike G. Amos, Georgia
Ronald Berard, Louisiana
Juanita Berard, Louisiana
Dr. Albert T. Bernett, Georgia
Haley Bates, Arkansas
L. C. Bates, Arkansas
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Louis L. Redding, Delaware

Coordinated by the Southern Conference Educational Fund, Inc.

Aubrey W. Williams, President, 822 Perdido Street, New Orleans, La.

Carl and Anne Braden Join SCEF Staff

Carl and Anne Braden will join the staff of SCEF as field secretaries on September 1st.

In announcing the appointment of the Bradens, SCEF President Aubrey W. Williams, said that for time being at least they would remain based in Louisville where they had contributed so much for so long to the battle against prejudice and racial discrimination.

In addition to assisting with the general program of the Fund, Mr. Williams said the Bradens will give special attention to the job of winning voting rights for all citizens and organizing support in all Southern states for civil rights legislation at the national and state levels.

"The addition to the SCEF staff, said Mr. Williams, of two such able and dedicated persons as the Bradens, is a happy development for the SCEF and for the cause of decency and democracy in the South."

Judge Blows Whistle in Delaware

Integration has been ordered in the Arlington County, Virginia, schools starting this month.

Federal Judge Albert Bryan set the date after his desegregation decree of a year ago was upheld by an appelate court.

He refused to delay his decree until after the U. S. Supreme Court had ruled on the constitutionality of the state's "pupil-placement" law—a Jim Crow gimmick that has been voided elsewhere in the South by federal courts.

(However, Federal Judge John Paul did grant the Charlottesville, Va., school board a stay on these grounds.)

Thus Arlington—which neighbors the District of Columbia—appears destined to be the first school system to test the Virginia law which would cut off state funds to any that operated on an integrated basis.

* * * *

Three North Carolina cities broke the ice in their state by voluntarily admitting token numbers of Negro pupils to formerly all-white schools. The Charlotte school board accepted five out of 41 applications for transfer; Winston-Salem reassigned one child and Greensboro six. In all, 12 out of 51 Negroes who applied were accepted.

* * * *

Federal Judge Paul Leahy stopped all fooling around in Delaware. His decree, issued in July, told the state school board to "submit to this court within 60 days from the date of this order a plan of desegregation providing for the admittance . . . on a racially non-discriminatory basis, for the fall term of 1957, of pupils in all public school districts of the state of Delaware which heretofore have not admitted pupils under a plan of desegregation approved by the State Board of Education."

The decision came in response to complaints filed against eight school districts in May, 1956, by attorney Louis L. Redding in behalf of some 50 Negro children.

* * * *

Only two West Virginia counties — Jefferson and Hampshire — will have segregated school systems this fall.

The other 53 have this situation: 19 are desegregated completely; 22 partially and 12 have no Negroes.

Civil Right Bill

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of the situation in his statement endorsing the measure as passed by the Senate. He said:

"The fact that no filibuster developed on the motion to take up the bill (where it has always developed in the past) is a tribute to Negro voters in the November election who demonstrated their flexibility and determination to support issues rather than blindly to support parties.

"The November election shift, coupled with the pressure for a change in the Senate filibuster Rule 22 last January, awakened both parties to the foolhardiness of a filibuster against taking up the bill.

"The Negro voter can thank himself for the fact that there was no filibuster."

* * * *

As Wilkins notes, the bill does not confere any new right; it merely reasserts federal responsibility for protecting a privilege of citizenship that already exists. Thus, one cannot help swallow a bit of gall at the sight of a Congress unable to make "progress" back to democratic fundamentals without all kinds of tinkering.

And what about school integration? Did nobody tell Eisenhower and the "liberal" Democrats what the Supreme Court had decided was the law of the land? All the horrified disavowal of any intention to use "federal troops" to enforce school desegregation served as smokescreen for a complete retreat from this problem.

In sum, this Congress and Administration, having tiptoed up to 1783, is still years behind 1954.

Boycotters Get Full Wrath of Alabama 'Law'

"I am happy the day has come when you no longer pay to be mistreated. You are not seeking to put the stores out of business but to put justice into business.

"If going to jail is the price to pay for freedom, we must fill up the jail houses of the South. We are not asking anything from the whites, except freedom. We do not want to be their brothers-in-law, but we do want to be their brothers under the law."

Thus spoke Reverend M. L. King of Montgomery to the Negro citizens of Tuskegee, Ala., who are boycotting white merchants in protest of the new state law which gerrymanders the city limits to eliminate Negro voting.

A few days after his address, the state attorney general personally led raids on the headquarters of the Tuskegee Civic Assn., which is coordinating the protest movement.

Subsequently, he obtained from a state judge an injunction ordering an end to the boycott. The writ was delivered to Dean Charles G. Gomillion of Tuskegee Institute, who has been one of the most courageous and effective spokesmen for the Negro community.

It is unclear how such an order will win patronage for white merchants.

But from the Southern Christian Leadership Conference—a new region-wide body formed last month—came this word: "The SCLC strongly and unanimously condemns as un-Christian and undemocratic the actions of the legislature of the state of Alabama and Alabama State Atty. Gen. John Patterson in the current atrocities against the Negro citizens of Tuskegee."

The SCLC dedicated itself to getting full voting rights for Negro citizens in the South. Among the charter members were Reverend King, Rev. C. K. Steele of Tallahassee, Rev. F. L. Shuttlesworth of Birmingham and ministers and professional people from eight other states.

"Boycotting will not be used as a weapon, only as a last resort," Reverend Shuttlesworth declared. "Harmonious relationship is the aim, not putting anyone out of business."

Reverend Steele, SCEF board member, commented: "Boycotting is only non-cooperation with evil."

The SCLC plans to set up full-time staff and headquarters in Atlanta, with regular meetings to be held at various major cities in the region.